

EXHIBIT F

In The Matter Of:

10x Genomics v.

Celsee, Inc.,

Teleconference

December 16, 2019

Wilcox & Fetzer, Ltd.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF DELAWARE

10X GENOMICS)
 Plaintiff,)
 V.)CASE NO.
)1:19-cv-00862-CFC-SRF
CELSEE, INC.)
 Defendant.)

Teleconference taken pursuant to
notice at the Federal Courthouse, held in
Magistrate Judge Sherry R. Fallon's
Chambers, 6th Floor, 844 King Street,
Wilmington, Delaware 19801, on Monday,
December 16, 2019, beginning at 2:00 p.m.,
before Patrick J. O'Hare, RPR, Notary
Public.

WILCOX & FETZER
Registered Professional Reporters
1330 N. King Street
Wilmington, Delaware 19801

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1 **THE COURT:** Good afternoon,
2 everyone. This is Magistrate Judge Sherry
3 Fallon. This is the time that I set aside
4 for the discovery dispute over the
5 protective order in 10x Genomics versus
6 Celsee, Inc.

7 Let's start with appearances of
8 counsel for the plaintiff.

9 **MR. COTTRELL:** Yes, good
10 afternoon, Your Honor, Fred Cottrell of
11 Richards Layton for the plaintiff 10x
12 Genomics, and my co-counsel from Durie
13 Tangri, Eugene Novikov is on.

14 **MR. NOVIKOV:** Good afternoon,
15 Your Honor.

16 **THE COURT:** Good afternoon.
17 Thank you.

18 And who's on the line for
19 Celsee?

20 **MR. FARNAN:** Good afternoon,
21 Your Honor, Brian Farnan on behalf of the
22 defendant. With me is Derek Walter from
23 Weil Gotshal.

24 **MR. WALTER:** Good afternoon.

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1 **APPEARANCES:**
2 (Via telephone)

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1 **THE COURT:** Good afternoon.

2 All right. I have the filings
3 in front of me. It appears that the
4 plaintiff's filing was the first to be
5 docketed, I have number 45.

6 So, I will hear from the
7 plaintiffs first and then I'll hear from
8 defendants with respect to the protective
9 order provision that either should be
10 included in a two-tier version with
11 confidential materials and highly
12 confidential materials, attorneys' eyes
13 only, or the contrasting proposal by Celsee
14 with respect to having two in-house
15 attorneys permitted under the protective
16 order to view highly confidential material.
17 So, let me hear from plaintiffs
18 first.

19 **MR. NOVIKOV:** Thank you,
20 Your Honor. This is Gene Novikov from
21 Durie Tangri for the plaintiff 10x, and
22 I'll try to supplement our submission
23 rather than rehash it and Mr. Cottrell will
24 chime in if I go off the rails.

<p style="text-align: right;">Page 5</p> <p>1 The one thing that I think is 2 clear from the caselaw is that in a case 3 like this where you have a competitor 4 litigant and you have a case in which 5 highly confidential information is going to 6 get exchanged, the question of whether or 7 not in-house counsel have access to the 8 most highly confidential information that's 9 going to get produced is made first with 10 respect to specific individuals and not in 11 the abstract. 12 And, two, on a pretty fulsome 13 record about who those individuals are and 14 what they do, and what we have here after 15 Celsee's responsive filing, which added 16 some information that we didn't previously 17 have about what exactly they're proposing, 18 is that they would like to have access to 19 the most highly confidential information 20 that 10x is going to be producing for their 21 general counsel, who is a Ph.D. in 22 biochemistry, and sort of a player to be 23 named later. All right. 24 And with respect to the player</p>	<p style="text-align: right;">Page 7</p> <p>1 provision is in position for this reason. 2 And with respect to the general 3 counsel, we don't have the sort of record 4 that I think the caselaw would require to 5 allow access in a case like this. He's 6 provided a declaration that says only that 7 he is part time and he's based in Boston. 8 He doesn't say that he's a competitive 9 decision-maker. 10 Their brief says that he's not 11 a competitive decision-maker, again, with 12 respect to the subject matter of the case, 13 for the technical subject matter of the 14 case, but of course, the documents that are 15 going to get produced go far beyond that. 16 Today we have a set of 17 disclosures due that's going to include 18 confidential pricing information and 19 revenue and sales information and the -- 20 Mr. LaPointe's declaration doesn't make the 21 sort of representation that the caselaw 22 would require. 23 And the reason it doesn't is, 24 of course, he is a competitive</p>
<p style="text-align: right;">Page 6</p> <p>1 to be named later, we have this provision 2 that says, well, they can tell us three 3 days in advance who it's going to be, and 4 they don't have to really tell us much 5 about who they are or what they do. And 6 there's no procedure in place for us to 7 raise any objections and for the Court to 8 resolve any disputes. 9 And we, also, have this 10 requirement that the person not be a 11 competitive decision-maker with respect to 12 sort of the technical area of the 13 litigation, and it's not clear what that is 14 supposed to mean. 15 Celsee has basically one 16 product line and it's a product line that's 17 the subject of this case, and so, any 18 competing, the competitive decision-making 19 at this company is going to be, you know, 20 likelihood competitive decision-making with 21 respect to the technical area of the case. 22 So, with respect to sort of the 23 abstract proposal that they can just tell 24 us who else it's going to be, we think the</p>	<p style="text-align: right;">Page 8</p> <p>1 decision-maker, he is the general counsel 2 at a 60-person company, he's there to give 3 strategic advice, you know, he has a Ph.D. 4 in the area of science in which the company 5 operates, and under any set of 6 circumstances, I strongly suspect he would 7 meet the, quote/unquote, advice and 8 participation in competitive 9 decision-making standard that's set forth 10 in the case. 11 And so, you know I don't want 12 to belabor this. In the brief they say, 13 you know, we've asked for an injunction, 14 they want to be able to see the documents 15 we're relying on. I certainly get that. 16 I can tell you we will be 17 reasonable with respect to things like 18 contentions and we'll work with them on the 19 redactions that would be needed so that 20 their in-house folks can see the aspect of 21 the discovery that have life of strategic 22 veilance. 23 Now, the balance of harm is 24 here, we have two small companies, they're</p>

<p style="text-align: right;">Page 9</p> <p>1 close competitors in the same market. Self 2 presentment for their general counsel and 3 someone we don't know about to have access 4 to our most confidential stuff, and we 5 think it's pretty clear, at least for the 6 time being, we need to be able to produce 7 information in this case on an outside 8 counsel's -- true outside counsel's eyes 9 only basis.</p> <p>10 And if the Court would like to 11 have a provision that permits Celsee to 12 make the sort of record that they would 13 need under the cases to allow access here, 14 we're not opposed to that, but definitely 15 not the provision that they proposed.</p> <p>16 Thank you very much.</p> <p>17 THE COURT: Well, what more is 18 needed? I can understand perhaps 19 lengthening the notice time, and, in fact, 20 that's a provision that Celsee indicated it 21 wouldn't be opposed to agreeing to 22 reasonable inquiries in the duration of the 23 notice period.</p> <p>24 And the provision they propose</p>	<p style="text-align: right;">Page 11</p> <p>1 central issue, which is that the cases 2 apply a competitive decision-making 3 standard that is broader than what's 4 proposed.</p> <p>5 Frankly, Your Honor, I'm not 6 totally sure what it means to have -- to 7 represent that Mr. LaPointe, for example, 8 is not a competitive decision-maker with 9 respect to the technical area of the case.</p> <p>10 Like, does it just mean that he is not a 11 competitive decision-maker with respect to 12 product design?</p> <p>13 Again, I'm not sure that that's 14 sufficient under the cases, and it's not 15 sufficient in light of the fact that we're 16 going to be producing competitively 17 confident data that goes beyond just 18 technical information. So, that's one 19 thing.</p> <p>20 And the other thing that I 21 would say would be needed would be a 22 requirement that when they propose who is 23 to have access they provide some 24 information that goes beyond just that</p>
<p style="text-align: right;">Page 10</p> <p>1 clearly affirms that the attorneys who 2 would see the information would not have 3 direct responsibility for or direct 4 involvement in the prosecution of patent 5 applications or in competitive 6 decision-making, and it goes on to relate 7 specifically to the technology at issue in 8 this case.</p> <p>9 And, as I understand it, there 10 was even some further refinement of the 11 language that follows competitive 12 decision-making. Certainly I'll leave it 13 to the parties to speak to that, but what 14 more is needed to give assurances to 10x 15 about everything possibly being done to 16 avoid inadvertent disclosure?</p> <p>17 MR. NOVIKOV: Sure. So, I 18 think a couple of things. One, it cannot 19 just be competitive decision-making with 20 respect to the technical subject matter of 21 the case. And Your Honor is correct, there 22 was some discussion about the scope that's 23 fundamentally the scope of the prosecution 24 bar, but that doesn't really address the</p>	<p style="text-align: right;">Page 12</p> <p>1 person's name and title, which I think 2 would be all that's required under this 3 provision.</p> <p>4 I think we would want to know 5 what that person's role is at the company, 6 that person's day-to-day interaction with 7 the senior managers and people who are 8 going to make competitive strategic 9 decisions with respect to the company, and, 10 you know, what measures are in place to 11 prevent inadvertent disclosures.</p> <p>12 And the provision doesn't 13 require -- doesn't require any of that at 14 the moment.</p> <p>15 THE COURT: Given the size of 16 the defendant and some of the 17 particularities of the defendant which have 18 been argued to be the genesis for what the 19 defendants are requesting in the protective 20 order, how do the parties, and potentially 21 the Court, deal with issues if there's 22 certain information that's produced in 23 discovery by 10x and the Court were to 24 hypothetically, you know, go with 10x's</p>

<p style="text-align: right;">Page 13</p> <p>1 proposal for the two-tier confidentiality 2 designations, how would Celsee deal with 3 those situations in which information that 4 might be produced with the attorneys' eyes 5 only designation is something that they 6 truly need to share with in-house folks one 7 or two, but let's just say one for purposes 8 of this hypothetical, in order to, you 9 know, be able to litigate and formulate 10 their strategy for purposes of litigation? 11 How does the protective order 12 allow for them to seek some exceptions to 13 the designation to allow them to share it 14 with the people they need to share it with 15 arguably to make decisions about litigation 16 strategy? 17 MR. NOVIKOV: So, I believe the 18 protective -- First of all, I mean, I think 19 the first thing that they would do is that 20 they would comment and have a discussion 21 with us about it. 22 As I said, we certainly 23 understand their need when it comes to the 24 stuff that has strategic weight and is</p>	<p style="text-align: right;">Page 15</p> <p>1 plaintiff's submission on page nine? 2 MR. NOVIKOV: Let me confirm. 3 Sorry, I believe I'm actually looking at 4 Exhibit A to defendant's submission. I 5 apologize for that, but with respect to 6 that, it's the same and it's on page -- it 7 starts on page nine of that document. 8 THE COURT: All right. Let me 9 take a moment to look at that before I hear 10 from Celsee. 11 In the interim, do you have any 12 additional comments before I hear from 13 defendants? 14 MR. NOVIKOV: I don't. I'm not 15 sure if Mr. Cottrell has anything to add. 16 MR. COTTRELL: No, Your Honor, 17 I don't have anything to add. Thank you. 18 THE COURT: All right. Give me 19 a moment to read this provision before I 20 hear from Celsee, please. 21 (Brief pause.) 22 THE COURT: All right. Who 23 will take the lead on behalf of Celsee? 24 MR. WALTER: This is Derek</p>
<p style="text-align: right;">Page 14</p> <p>1 important to settlement or that is sort of 2 truly pivotal to case strategy, certainly 3 understand that there may be at least a 4 legitimate desire and a need to see that 5 stuff. And I think in the first instance 6 they would come to us, and we would be 7 happy to work with them and see how we can 8 accommodate that while protecting our 9 information. 10 I believe, Your Honor, that 11 there is a provision in the protective 12 order for the court to resolve disputes 13 with respect to the level at which 14 documents are designated. I'm scrolling 15 through that now to make sure. 16 THE COURT: I'll give you a 17 moment to do that, because that's kind of 18 an important provision that I would like to 19 take a look at. 20 MR. NOVIKOV: Absolutely. So, 21 I just found it, it is on page nine of our 22 submission, it's called contesting the 23 designation. 24 THE COURT: Exhibit C to</p>	<p style="text-align: right;">Page 16</p> <p>1 Walter, Your Honor. 2 THE COURT: All right. Go 3 ahead, Mr. Walter. 4 MR. WALTER: Thank you. 5 So, you know what we have to 6 look at here is a simple balancing test, we 7 have to weigh the risk of an inadvertent 8 disclosure or competitive misuse against a 9 harmed and moving party. 10 And it should be very obvious 11 that this is not the kind of situation 12 where there's any sort of meaningful risk, 13 and that puts aside the protections that we 14 put in the protective order. 15 So, the individual, who is the 16 general counsel now, he's a part-time 17 general counsel, he's been with the company 18 for five months and he works remotely. 19 Okay, this is not someone who 20 is at the facility, who is there on a 21 day-to-day basis, he works remotely part 22 time, and he's only been there for a short 23 period of time. 24 This is someone who's been</p>

<p style="text-align: right;">Page 17</p> <p>1 brought in to help out with discrete legal 2 issues that the company faces, including 3 reviewing agreements, preparing supply 4 agreements, Human Recourses matters, 5 material transfer agreements, and most 6 importantly, one of the key things he was 7 brought in for was to manage and provide 8 input on the case. 9 This isn't someone who's got a 10 long history with the company, who's 11 ingrained with their decision-making and is 12 integral to everything made. He's someone 13 who has been brought in on a part-time 14 basis, who works remotely, and his primary 15 role has been to manage this litigation. 16 Now, let's be clear. He's an 17 in-house attorney and he knows Celsee's 18 business better than an outside attorney, 19 but in many respects, he's actually more 20 like an outside attorney. 21 This situation we have here is 22 very much like the situations that are 23 replete throughout the caselaw where courts 24 do allow in-house attorney to have access</p>	<p style="text-align: right;">Page 19</p> <p>1 You know, we're going to make 2 that absolute, okay, that's not a problem. 3 We're willing to agree that he won't 4 participate in any sort of strategic 5 decision-making, as long as it's clear, you 6 know, he is going to be the person who's 7 going to be making decisions related to 8 management of this litigation. 9 But, you know, the intention 10 there wasn't to suggest that he won't be 11 involved in technical aspects but he will 12 be involved in business strategic 13 decision-making, that's not the intention 14 here. 15 The individual who we propose 16 to give highly confidential information to 17 just doesn't have the bandwidth to be 18 involved in that kind of strategic 19 decision-making and that's not what he was 20 brought on to do. 21 That really should be enough 22 here to allow him to have access to highly 23 confidential attorneys' eyes only 24 information, but there's even more, I think</p>
<p style="text-align: right;">Page 18</p> <p>1 to highly confidential attorneys' eyes only 2 information. 3 Now, those facts alone, okay, 4 which are actually clear from the record. 5 In fact, you know, it wasn't us who 6 submitted the resume of Christian LaPointe, 7 that came from the plaintiffs. They 8 submitted that with their moving papers. 9 So, they know what he was about, they know 10 how long he's been at the company, they 11 know he's part time. 12 Beyond those facts, he's 13 willing to agree not to be involved in 14 having prosecution, that's a significant 15 factor, that's also something that's 16 identified throughout the caselaw, and he's 17 agreed not to participate in strategic 18 decision-making. 19 Now, Mr. Novikov has pointed 20 out that the protective order provision 21 says he won't agree to strategic decision 22 or won't participate in strategic 23 decision-making related to the technical 24 subject matter of the case.</p>	<p style="text-align: right;">Page 20</p> <p>1 there's another point here that's really 2 important not to forget. 3 We're not the company that 4 kicked this litigation off, we're the ones 5 that have been sued. This isn't a 6 situation where you have a patent assertion 7 entity or a company that's looking to get 8 its hands all over the inside information 9 of another company that can go off and sue 10 other people about additional patent claims 11 against the company its already sued. 12 10x has sued us. They have 13 asserted seven patents against us, they've 14 alleged willful infringement, they've 15 alleged false advertising, violation of the 16 Delaware Deceptive Trade Secret Patent -- 17 Practices Act, and it's very clear they 18 want to try and add trade secret 19 allocations to the case. 20 They want to shut Celsee down, 21 and now they say that the attorney that 22 Celsee has hired to work with them on the 23 case, an interstate outside counsel can't 24 see whatever aspect of their claims and</p>

<p>Page 21</p> <p>1 defense is. That's heavy-handed and it's 2 not supported in the law. 3 Now, in view of that situation, 4 there's not really any meaningful risk to 5 10x Genomics here. On the other hand, the 6 significant harm is to Celsee. This isn't 7 a company like Apple or Intel or Microsoft 8 that's having one of its mini product lines 9 attacked and it's going to go on doing 10 whatever it's doing regardless of how the 11 case turns out. 12 10x is putting everything that 13 it's got in the entire company, and like I 14 mentioned, they're trying to shut down 15 Celsee. It's harmful if the person who is 16 going to be supervising the patent 17 litigation on behalf of the company doesn't 18 have broad access to the litigation 19 materials in order to manage the 20 litigation, make strategic decisions on the 21 course of the case. That much is clear. 22 You know, I want to address a 23 couple other points that were made here. 24 They mentioned the provision in the</p>	<p>Page 23</p> <p>1 And I think there is a little 2 risk here potential for a motion practice 3 before Your Honor, which is what the 4 protective order ultimately calls for. 5 You know, another thing Mr. 6 Novikov raised is that they want to have 7 more information about what Mr. LaPointe 8 was going to be doing, I provided that 9 information. I think on this call they 10 didn't ask for this information previously. 11 I got to address the point 12 about the competitive decision-making 13 provision, and as Your Honor noted, they 14 want to have the notice provision extended 15 for a certain period of time and we can 16 agree to do that to address that concern. 17 And then, you know, finally 18 there's this issue of a safeguard, and as I 19 noted already, he's someone who works 20 remotely, he's not someone who is there on 21 a day-to-day basis, you know, walking down 22 the hall and, you know, sharing an office 23 or next door to the CEO. That's not the 24 situation here.</p>
<p>Page 22</p> <p>1 protective order regarding what happens if 2 we can't agree. And I think Your Honor has 3 probably had a chance to take a look at 4 that, and I think the important point to 5 know about that provision is that we're 6 going to end up with a motion practice 7 before Your Honor. 8 If they don't make something 9 highly confidential and attorneys' eyes 10 only and we brought it in and we say we 11 like to have it be designated and they say 12 no, the next step is motion practice before 13 Your Honor. 14 And, you know, I'm not too 15 confident -- I mean, even Mr. Novikov has 16 said that they would be happy to work with 17 us on that, but I have to be clear. I'm 18 not too confident in how that's going to 19 turn out given we're in a situation that we 20 have an individual like Mr. LaPointe and 21 they're trying to prevent him from having 22 access to materials, things that may be 23 taking a more heavy-handed approach with 24 this than they're suggesting.</p>	<p>Page 24</p> <p>1 You know, if we need to do 2 something, you know, to affirm that they 3 got, like, an isolated litigation laptop or 4 an isolated litigation e-mail account, we 5 can do that, that's fine, but it really 6 shouldn't be necessary in this kind of 7 situation. 8 And I don't have any further -- 9 anything further beyond that unless the 10 Court has questions. 11 MR. NOVIKOV: May I respond 12 briefly for defendant? 13 THE COURT: Go ahead, Mr. 14 Novikov. 15 MR. NOVIKOV: Thank you very 16 much. So, a couple of things. So, as Mr. 17 Walter suggested at the end of the call, he 18 has provided some new information that's 19 not in their filing and it's not in their 20 declaration, and that's exactly the sort of 21 thing that I think 10x and the Court should 22 have a record of before the decision is 23 made; right? 24 He's represented now that Mr.</p>

<p style="text-align: right;">Page 25</p> <p>1 LaPointe was brought on primarily to manage 2 this case and that he is in effect more 3 like an outside attorney. That's the sort 4 of thing -- I agree that that's a salient 5 inquiry, but that's the sort of thing that 6 I think ought to be in a declaration from 7 Mr. LaPointe. 8 And the only other thing that I 9 want to say is, you know, Mr. Walter 10 mentioned that, you know, Celsee is the one 11 that's been sued, he suggests that we're 12 trying to shut them down, and it is true 13 that we filed this lawsuit. 14 I think this lawsuit, as the 15 complaint makes clear, that my client 10x 16 has very serious concerns about Celsee 17 essentially being a copycat company. I 18 think that that bears on whether or not 19 they should get to have access to the most 20 sensitive information that's going to get 21 produced here. 22 Mr. Walter mentioned that Mr. 23 LaPointe needs stability to manage the 24 litigation. I think the cases are clear</p>	<p style="text-align: right;">Page 27</p> <p>1 memorandum order in writing. 2 I'm sorry? It sounds like I'm 3 having some interference on the phone. Can 4 everyone hear me? 5 MR. NOVIKOV: Yes, Your Honor. 6 MR. WALTER: Yes, Your Honor. 7 MR. COTTRELL: Yes, I can hear 8 you. 9 THE COURT: All right. My 10 ruling is this: For present purposes, I'm 11 going to go the more traditional route and 12 adopt 10x's proposal with the two-tier 13 confidentiality tier and highly 14 confidential attorneys' eyes only tier, 15 rather than Celsee's proposal. 16 But that is without prejudice 17 to Celsee to continue to meet and confer 18 with 10x to see if the parties can come to 19 some terms, now that more information has 20 been disclosed on this teleconference about 21 Mr. LaPointe, specifically with respect to 22 carving out access for Mr. LaPointe to 23 certain documents that he might not 24 otherwise have access to under the</p>
<p style="text-align: right;">Page 26</p> <p>1 that managing outside counsel is not a 2 compelling reason to grant in-house access. 3 They have hired Weil Gotshal, which is 4 obviously one of the leading accufirms in 5 the country to litigate this case. 6 As this Court has said, in 7 circumstances like these, courts typically 8 have no trouble concluding that outside 9 counsel can manage the case perfectly well 10 without having to provide the highest 11 degree of information to anybody who's 12 in-house. 13 So, that's all I have, 14 Your Honor. I would submit that they have 15 not put forth a sufficient record for the 16 sort of decision they're asking Your Honor 17 to render here. 18 THE COURT: Okay. All right. 19 Having read the briefs and heard the 20 arguments of counsel on this teleconference 21 today, I'm prepared to make a bench ruling. 22 The transcript of this hearing 23 will serve as the order of the Court, I 24 will not be issuing any additional</p>	<p style="text-align: right;">Page 28</p> <p>1 provisions that I am adopting today. 2 And the basis for my ruling is, 3 as the parties have -- as both sides have 4 acknowledged, the caselaw informs the 5 Court, specifically the Deutsche Bank case 6 and British Telecom and other cases that 7 both sides have cited in their briefing, 8 that this is a balancing test. 9 The risk of inadvertent 10 disclosure or misuse must be balanced 11 against the potential harm to the opposing 12 party from all restrictions imposed upon 13 that party's right to have the benefit of 14 counsel of its choice. 15 And, moreover, the Court has 16 brought discretion to decide the degree of 17 protection, and the protective order may be 18 used as a tool to strike that balance 19 between these competing interests. 20 From what I've heard, the 21 concern obviously is the disclosure of 22 competitively sensitive information to 23 someone who is, because of their role 24 internally within the company, has the</p>

<p style="text-align: right;">Page 29</p> <p>1 potential to inadvertently disclose it or 2 use it or inadvertently misuse it, not 3 intentional perhaps, but just by virtue of 4 the role that they play within that 5 company. 6 Now, there may be ways around 7 that, but I don't think I've heard enough 8 on this call to be assured by Celsee that 9 there aren't sufficient safeguards in 10 place. 11 And I'm also concerned that 12 this proposed language about two in-house 13 attorneys, only one of which who's really 14 been described in any detail, Mr. LaPointe, 15 through his declaration and through the 16 representations of counsel. 17 I don't know who Attorney No. 2 18 might be, and simply springing a name and a 19 job title and assurances that the material 20 won't be inadvertently disclosed or misused 21 doesn't give the Court assurances, as it 22 does not give the plaintiff assurances. 23 But, like I said, there may be 24 a path forward. Certainly, I think with</p>	<p style="text-align: right;">Page 31</p> <p>1 get to the point where there's no 2 alternative but to present them here to the 3 Court, I'm going to be looking for whether 4 there has been flexibility. 5 If I find that that's really 6 important information for Celsee to be able 7 to share with Mr. LaPointe or, you know, in 8 the event that, you know, there becomes 9 another individual there, as of to date 10 unknown, that it needs to be shared, I'm 11 going to be looking for some flexibility 12 and not unreasonable conduct to tie the 13 hands of Celsee from litigating this case 14 as it needs to. So, I'll be looking for 15 that. 16 In any event, my ruling now is 17 to protect the information in the 18 traditional sense that most protective 19 orders have this two-tier designation in it 20 and it seems to work well. 21 I know it's not a one size fits 22 all for all litigation, and this case may 23 be the exception to that, but for present 24 purposes, I think it's the way to go, I</p>
<p style="text-align: right;">Page 30</p> <p>1 respect to Mr. LaPointe there may be a path 2 forward, and the safest thing for the Court 3 to do, because once confidential 4 information is out in the realm, you can't 5 stuff it back in the can, so to speak. 6 The safest thing for the Court 7 to do is to protect that information by the 8 two-tier confidentiality designations, 9 knowing that there is the means within the 10 protective order to contest the 11 designation. 12 And I think that 10x -- I'm 13 sure both sides, not just 10x, but Celsee 14 too, can read between the lines of this 15 ruling and know I'm expecting some 16 flexibility here, that if a small company 17 like Celsee truly needs attorneys' eyes 18 only documents to be shared with Mr. 19 LaPointe in order to make strategic 20 litigation-related decisions in the case, 21 then there has to be some flexibility 22 there. 23 I'm expecting some flexibility 24 on the part of 10x, because when disputes</p>	<p style="text-align: right;">Page 32</p> <p>1 will be receptive to an amendment to the 2 protective order if the parties are able to 3 reach agreement to carve out a provision 4 for Mr. LaPointe. 5 And I will be receptive to 6 hearing any further disputes with respect 7 to overuse of the attorneys' eyes only 8 confidential designation in this case in an 9 effort to not necessarily truly protect 10 sensitive information, but more as an 11 offensive weapon to tie the hand to the 12 other side in litigating the case properly. 13 So, that is my ruling, it's 14 under Rule 72(a), any party who wishes to 15 object may timely take objections to the 16 district judge who will then review this 17 transcript and my order to determine 18 whether it is clearly erroneous or contrary 19 to law. 20 Is there anything further from 21 10x? 22 MR. NOVIKOV: Nothing from 10x 23 Your Honor, thank you. 24 THE COURT: Is there anything</p>

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1 further from Celsee?
2 **MR. WALTER:** No, Your Honor.
3 **THE COURT:** All right. Thank
4 you, counsel, that concludes our
5 teleconference.
6 (Teleconference concluded at
7 2:35 p.m.)
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1 STATE OF DELAWARE.)
2 NEW CASTLE COUNTY)
3
4 CERTIFICATE OF STENOGRAPHER
5
6 I, Patrick J. O'Hare, RPR, do
7 hereby certify that I further certify that
8 the foregoing is a true and correct
9 transcript of the teleconference.
10 I further certify that I am not
11 counsel, attorney, or relative of either
12 party, or otherwise interested in the event
13 of this suit.
14

15 
16

17 -----
18 Patrick J. O'Hare, RPR
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A	adopting (1) 28:1	7:5 9:13 13:12,13 17:24 19:22	26:20 around (1) 29:6
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